

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

UNITED STATES OF AMERICA,

Plaintiff,

v.

MICHAEL L. BUERSTATTE,

Defendant.

CASE NO. CR10-0153-JCC

ORDER DENYING MOTION FOR
EARLY TERMINATION OF
SUPERVISED RELEASE

This matter comes before the Court on Defendant Michael Buerstatte's second motion for early termination of supervised release (Dkt. No. 66). Having thoroughly considered the motion, accompanying letters, the input of the U.S. Probation Office and Government, and the balance of the record, the Court hereby DENIES the motion for the reasons explained herein.

I. Background

In April 2009, Mr. Buerstatte pleaded guilty to possession of child pornography in violation of 18 U.S.C. § 2252A(a)(5)(B). (E.D. Wash. CR08-0111-WFN Dkt. No. 82 at 1.) The Court sentenced Buerstatte to 12 months and a day in prison and 5 years of supervised release with several special conditions. (*Id.* at 2–4.) Mr. Buerstatte has had several violations of his probation conditions and the Court has twice revoked Mr. Buerstatte's term of supervised release. The Court discussed his prior violations in orders dated May 16, 2013 and August 4, 2015 and will not reiterate that discussion here. (Dkt. Nos. 38, 50.) On March 29, 2016 the Court

1 revoked Mr. Buerstatte's term of supervised release and imposed time served followed by two
2 years of supervised release due to his unauthorized contact with a minor. (Dkt. No. 64.) His
3 current term of supervised release is set to expire on March 28, 2018.

4 This is the second time Mr. Buerstatte has requested early termination of supervised
5 release. (Dkt. No. 66.) He seeks early termination in order to attend an out-of-state family
6 wedding and to accept a fulltime job he has been offered. (*Id.* at 1.) The Government and
7 Probation oppose the motion. (Dkt. No. 68).

8 In responding to the instant motion, Probation notes that Mr. Buerstatte has had
9 noncompliance issues over the last year that did not rise to the level of filing a violation
10 memorandum. In March 2017, Mr. Buerstatte's sexual deviancy provider determined that he
11 acted in a sexually inappropriate manner when he made sexually inappropriate comments to a 20
12 year-old female, waving a sex toy and showing her pornographic magazines. Mr. Buerstatte
13 asserts that this situation was a misunderstanding that he learned from. (Dkt. No. 67-1 at 1.)
14 However, for this behavior, Mr. Buerstatte was elevated to supervision by a U.S. Probation
15 Office's Sex Offender Specialist for six months, which terminated in October 2017.

16 The Government further opposes early termination because Mr. Buerstatte has not
17 completed sex offender treatment or finalized a sexual relapse prevention plan, and his sex
18 offender treatment provider has not endorsed early termination. (Dkt. No. 68 at 2.) The
19 Government also suggests that Mr. Buerstatte could work with Probation to accommodate his
20 work and travel plans. (Dkt. No. 68 at 3.)

21 **II. Early Termination**

22 Pursuant to 18 U.S.C. § 3583(e)(1), a court may terminate a term of supervised release at
23 any time after the expiration of one year of supervised release "if it is satisfied that such action is
24 warranted by the conduct of the defendant released and the interest of justice." The Court must
25 consider several factors in its evaluation of early termination, including the nature and
26 circumstances of the offense, the history and characteristics of the defendant, the need to deter

1 criminal conduct, the need to protect the public from further crimes, and the need to avoid
2 disparity. 18 U.S.C. § 3583(e).

3 The Court is encouraged by letters of support from Mr. Buerstatte's girlfriend, family
4 members, and potential employer, citing his positive behavior, hard work, and recent
5 mindfulness regarding his probation conditions. The Court recognizes the progress Mr.
6 Buerstatte has made in overcoming opioid use and illegal pornography, and his appreciation for
7 the treatment he has received. However, given Mr. Buerstatte's non-compliance history,
8 Probation's concerns regarding his behavior since his last violation of his probation conditions,
9 and uncompleted sex offender treatment the Court cannot be satisfied that termination of
10 supervised release is warranted by his conduct and in the interest of justice. The Court therefore
11 finds early termination inappropriate.

12 **III. Conclusion**

13 For the foregoing reasons, the Court DENIES Mr. Buerstatte's motion to for early
14 termination of supervised release (Dkt. No. 66).

15 DATED this 11th day of December 2017.

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John C. Coughenour
UNITED STATES DISTRICT JUDGE